

# **WEBINAR WEDNESDAYS**



**Wednesday, August 5, 2020**

## **Victims' Rights During the COVID-19 Pandemic**

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Distributed by:

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### Goals of the Training:

1. Understand the impact our actions can have on victims
2. Revisit VBR to ensure compliance
3. Importance of working as a TEAM with victim advocates
4. Need to stay up to date on Courts procedures and processes
5. Realize the stress victims are experiencing could be heightened based on today's times
6. Communication is key!

Arizona Constitution, Article 2, Section 2.1

*Victims' Bill of Rights*

(A) To preserve and protect victims' rights to justice and due process, a victim of crime has a right:

1. To be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse throughout the criminal justice process.
2. To be informed, upon request, when the accused or convicted person is released from custody or has escaped.
3. To be present at and, upon request, to be informed of all criminal proceedings where the defendant has the right to be present.
4. To be heard at any proceeding involving a pre-trial release decision, a negotiated plea, and sentencing.
5. To object to an interview, deposition, or other discovery request for the defendant, the defendant's attorney, or other person acting on behalf of the defendant.
6. To comply with the prosecution, after the crime against the victim has been charged, before trial or before any disposition of the case and to be informed of the disposition.
7. To read and give testimony relevant to the crime against the victim when they are available to the defendant.
8. To receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim harm or injury.
9. To be heard at any proceeding when any post conviction release from confinement is being considered.
10. To a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.
11. To have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and to have those rules be subject to amendment or repeal by the legislature to ensure the protection of these rights.
12. To be informed of victims' constitutional rights.

(B) A victim's exercise of any right granted by this section shall not be grounds for dismissing any criminal proceeding or setting aside any conviction or sentence.

(C) "Victim" means a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person's spouse, parent, child or other lawful representative, except if the person is its counsel for an offense or is its accused.

(D) The legislature, or the people by initiative or referendum, have the authority to amend, supplement and provide laws to enforce, implement, improve and ensure the rights guaranteed to victims by this section, including the authority to repeal any of these rights in reverse proceedings.

(E) The administration in the enforcement of victims rights by victims shall not be constrained to share or divulge information gained by the legislature to ensure the victims.

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### 1982 Ronald Reagan Task Force on Victims of Crime

1. Assess treatment of victims of crime in criminal justice system
2. Recommendations to improve their treatment

- System out of balance in favor of defendants
- Victim's revictimized by system
- Statements of victims



<https://ovc.ojp.gov/sites/g/files/xykuh226/files/media/document/87299.pdf>

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*This is one experience that one does not plan for, is not prepared for, has no knowledge of who or where to turn.—a victim*

*I will never forget being raped, kidnapped, and robbed at gunpoint. However, my sense of disillusionment of the judicial system is many times more painful. I could not in good faith urge anyone to participate in this hellish process.—a victim*

*Finally, my case was assigned to another district attorney who spent a great deal of time explaining to me what was happening in the case. Just being informed of all the facts reduced my anxiety greatly.—a victim*

*Why didn't anyone consult me? I was the one who was kidnapped, not the State of Virginia.—a victim*

*People have to realize that emotional scabs are constantly being scraped off as you appear time after time in court.—a victim*

*When one has been brutally attacked and injured, even a friendly and understanding voice on the phone can help overcome some of the sense of physical and psychological helplessness brought on by being a victim.—a victim*

*It is almost impossible to walk into a courtroom and describe in detail the thing you most want to forget. It is also devastating to have to face your assailant. Although you are surrounded by people and deputies of the court, the fear is still overwhelming.—a victim*

*What others see as an inconvenience is for the victim an endless nightmare.—a victim*

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### What is our role as Prosecutors?

- Educate
- Victims
- Courts
- Ourselves
- Share Information
- Speak up!



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## Who is a Victim?

- “Victim” means a person against whom the criminal offense has been committed. A.R.S. §13-4401(19)
  - “Victim” status arises upon arrest or formal charging. A.R.S. §13-4402
1. The victim;
  2. The parent, guardian or legal representative of minor or vulnerable adult;
  3. Next of kin of deceased victim
- **Anyone who qualifies is a victim:** When the person against whom a crime is committed is deceased or incapacitated, VBRs grants victim status to each person who fits within any of the defined categories of victims under the statute. E.H. v. Stayton, 245 Ariz. 331 (App. 2018).
  - **When the person against whom a crime was committed is deceased or incapacitated the VBR grants victims status to each person who qualifies as a victim**

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## Victims’ Rights

- Arizona Constitution, Art. 2, §2.1 (Victims’ Bill of Rights) Referred to as VBR (Nov 1990)
- A.R.S. § 13-4401, et. seq. (Crime Victims’ Rights) (1991)
- Title 8, Chapter 3, Article 7 – Victims’ Rights for Juvenile Offenses

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Section 2.1. (A) To preserve and protect victims’ rights to justice and due process, a victim of crime has a right:

1. To be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process.
2. To be informed, upon request, when the accused or convicted person is released from custody or has escaped.
3. To be present at and, upon request, to be informed of all criminal proceedings where the defendant has the right to be present.
4. To be heard at any proceeding involving a post-arrest release decision, a negotiated plea, and sentencing.
5. To refuse an interview, deposition, or other discovery request by the defendant, the defendant’s attorney, or other person acting on behalf of the defendant.
6. To confer with the prosecution, after the crime against the victim has been charged, before trial or before any disposition of the case and to be informed of the disposition.

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## — #1: Fairness, Dignity, & Respect

- Fairness is Due Process
- "To preserve and protect victims' right to justice and due process, a victim has a right ...
- To be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process." Ariz. Const. Art. II, §2.1 (A)(1).



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## #12 To Be Informed

- Inform victims of their constitutional rights
  - They have choices
  - Give them the options
- Our role is to educate
  - Provide overview of criminal justice system and process
- Face to face contact
  - Use video conferencing
  - Before or after court hearings
  - Meet at the office
  - Meet at a convenient location
- Phone
- With the Victim Advocate!



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- You are NOT alone!
- Arm your **Victim Advocate**
  - Alert them to issues
  - Highlight their value
- Make calls to victims together
  - Discuss the purpose of the call ahead and strategize

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**Prosecutors trying to process the 35th court change in the last 4 months**



**COVID-19  
Impact on Victims**

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**Victims' Rights**



**COMMUNICATION  
IS KEY!**

- Arizona Constitution, Art. 2, §2.1 (Victims' Bill of Rights) Referred to as VBR (Nov 1990)
- A.R.S. § 13-4401, et. seq. (Crime Victims' Rights) (1991)
- Title 8, Chapter 3, Article 7 – Victims' Rights for Juvenile Offenses

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### #3 Victims' Rights

**A.R.S. 13-4409:**  
**Notice of criminal proceedings**

- Court **MUST** provide notice **at least 5 days** before a scheduled proceeding
- Exception: if "it is not reasonable" to provide 5 days' notice - Court **MUST** put on record why
- If Court violates = §13-4436 (**Do-Over Provision**)
- Courts trying to problem solve to get hearings done



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### #3 Victims' Rights:

**Right to be Present**

- Victim has the right ... "[t]o be present at, and upon request, to be informed of all criminal proceedings where the defendant has the right to be present."
- Art. II, Sec. 2.1 (A)(3).



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### #4

## Constitutional Right to be Heard

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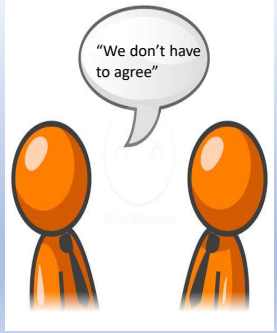
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## Exercising their rights

- They have rights
- Your role is to educate them
- You are not their attorney – you represent the State
  - But you may facilitate
- **They** can then choose what they want to do
- **THEY DO NOT NEED TO AGREE WITH YOU**
- **Take the time!**



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## COVID & Victims in Court

- Appearance in Court
  - In Person
  - Appear by phone
  - Video conferencing
- Victim Impact Statements
  - Written
  - By phone
  - Video
- Courts procedures
  - Constantly changing
  - Name on list, masks must be worn
- Liaison with court staff



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## COVID and Victims

- Appearance in Court
  - Victims have a constitutional right to be present in court.
  - Defendant's family does not. Their right is the same as the public (unless they are speaking).
  - Continuances may be needed to afford rights to victims right now.



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## #6 Victims' Rights: Right to Confer

Victim's right to confer on disposition of case is a constitutional right. Art. II, Sec. 2.1 (A) (6).

**13-4419 (A). Victim conference with prosecuting attorney.** "On request of Victim, the prosecuting attorney shall confer with the Victim about the disposition ..., including the Victim's views about ... a plea...."

**13-4423 (B)(1). Plea negotiation proceedings:** The Court shall not accept a plea agreement unless: the prosecuting attorney advises the court that *before* requesting the negotiated plea reasonable efforts were made to confer.

**13-4408(B).** if a prosecutor declines to proceed with a prosecution after the final submission of a case by a law enforcement agency at the end of an investigation, the prosecutor, before the decision not to proceed is final, shall notify the victim, whose information has been provided to the prosecutor pursuant to 13-4405, and provide the victim with the reasons for declining to proceed with the case. The notice shall inform the victim of the victim's right on request to confer with the prosecutor before the decision not to proceed is final.

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## Victim Meetings

- Constitutional right to CONFER
- Meetings/Prep
  - In Person
  - Phone
  - Video conferencing
    - Fabulous tool post-COVID



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## COVID and MMRCs Emergency – Respond Quickly



- Do your best, people are actually easy to reach right now
- Phone call, email, double-team with your victim advocate
- Must give victim reasonable time to respond
- ...court shall provide notice of criminal proceedings **at least 5 days** before a scheduled proceeding to allow the prosecutor's office to provide notice to victim (A.R.S. 13-4409(A))

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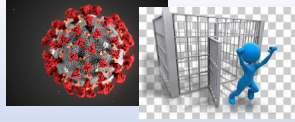
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## COVID and MMRCs



- Office wide stance
  - Impact of COVID-19 in jail = material change appropriate for Court's review
- Individualized consideration for each motion
- Balancing of impact of COVID-19 on jail population against constitutional purposes of bail, victims' rights and A.R.S. 13-3967 factors
  1. Views of the victim...
- Attack on conditions of confinement (8<sup>th</sup> Amendment violation) = civil rights action – not appropriate for Superior Court
- Direction from Appeals

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## COVID and MMRCs



- Defendants are being released
- Fear is increasing for victims
- Communication is key!
  - Notify there is a hearing, obtain comments, address court
  - Communicate if motion granted
  - Make sure registered with Jail to receive notification
- Victims at home – scared because Defendants released
  - Moving expenses
  - Re-locating Victim for Safety Reasons *State v. Brady*, 169 Ariz. 447 (App. 1991).
  - Expenses for installation of home security system (for a reasonable period necessary to restore equanimity) *State v. Quijada*, 246 Ariz. 356 (App. 2019).

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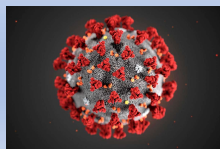
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## Impact on Victims

- Intensified responses/feelings
- Important to involve victim advocates – sounding board/resources
- Lots of questions
  - Spend the time
  - Make a call
- That's a good question let me get back to you
- Court's website – stay up to date
- Roundtable
  - Microsoft Teams/GoToMeeting/Zoom



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- Trials being continued
- Trials not happening
- Disappointment
  - Listen to the victims – allow them to vent
  - Victim advocates
  - Prosecutors
- Answer their questions
- Inform them of new dates
- Inform them things may not happen as scheduled – courts are changing procedures

#10 To a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.

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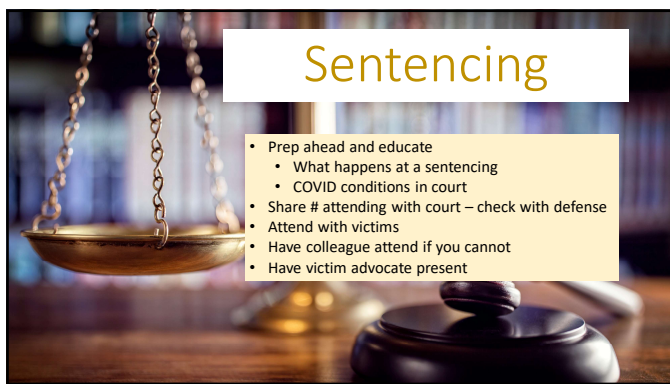
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## Sentencing

- Prep ahead and educate
  - What happens at a sentencing
  - COVID conditions in court
- Share # attending with court – check with defense
- Attend with victims
- Have colleague attend if you cannot
- Have victim advocate present

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## Prosecutorial Standing and Victim's Counsel

- Victim has a right to be represented by personal counsel at Victim's expense §13-4437(A)
- After filing **notice of appearance** – attorney shall be **endorsed** on all pleadings
- Counsel for Victim shall be included in bench conferences, chambers meetings and sessions with the trial court that directly involve victim's rights §13-4437(D)
- Ask them if it's okay to talk to the victim – they are now represented!
- Victim's counsel may not direct the prosecution *Lindsey R. v. Cohen*, 236 Ariz. 565 (App. 2015).
- Victim's counsel may not substitute for the prosecutor, except ... restitution §13-4437(E)

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- #8: A victim has the right...[t]o receive **prompt** restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury.
- Ariz. Const. Art. II, §2.1 (A)(8); §§ 13-603(C); 13-804

## RESTITUTION

- No hearings occurring?
- Stipulate in plea!
- If not communicate with defense and get a stipulation
- "I'll never see the \$"
  - MVD, Recorder, Inheritance
  - DOC = 30%
- "I don't want it; I don't want a reminder"
  - Send to charity
- Sentencing – 6 months deadline – ask for extension of time

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### Restitution is...

- Lost Wages *State v. Lindsley*, 191 Ariz. 195 (App. 1998).
  - FUTURE lost wages included *State v. Howard*, 168 Ariz. 458 (1991).
  - Can be compensated for using leave *In re Ryan A.*, 202 Ariz. 19 (2002).
- Funeral Expenses *State v. Spears*, 184 Ariz. 277 (1996).
- Re-locating Victim for Safety Reasons *State v. Brady*, 169 Ariz. 447 (App. 1991).
- Counseling/Medical Expenses *State v. Wideman*, 165 Ariz. 364 (App. 1990).
- Value of Damaged or Stolen Property *State v. Lindsley*, 191 Ariz. 195 (App. 1998).
- Expenses for installation of home security system (for a reasonable period necessary to restore equanimity) *State v. Quijada*, 246 Ariz. 356 (App. 2019).
- ANY expense that fits *State v. Wilkinson*, 202 Ariz. 27 (2002)
  - The loss must be economic
  - The loss must be one that the victim would not have incurred but for the defendant's criminal offense
  - The criminal conduct directly caused the victim's loss

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### Just as before Important Reminders

- **TREAT VICTIM WITH RESPECT AND DIGNITY**
- **INFORM**
  - Of criminal proceedings
  - Of victim's rights
  - Of pleas
  - How system works – courts changes
- **CONFER**
  - On plea agreement
  - On disposition



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